

Appeal from decision of California State Office, Bureau of Land Management, refusing to accept notice of location of placer mining claim for recordation. CA MC 101969.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Where a mining claim was located Aug. 15, 1981, and a copy of the official record of the notice of location was not filed with the proper BLM office within 90 days thereafter, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Leonard W. Nelson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Leonard W. Nelson, Sr., appeals the December 3, 1981, decision of the California State Office, Bureau of Land Management (BLM), which returned, unrecorded, the location notice for the Gypsy Witch placer mining claim, CA MC 101969, because it had not been timely filed with BLM as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claim was located August 15, 1981, and the location notice was filed with BLM November 27, 1981.

Appellant has not pointed to any error in the BLM decision, nor offered any explanation for his failure to conform to the requirements of FLPMA. 1/ The appeal is therefore subject to summary dismissal.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on public land after October 21, 1976, to file in the proper BLM office within 90 days after the date of location of the claim, a copy of the official record of the notice of location, and on or before December 30 of each calendar year after the year in which the claim was located, to file evidence of the assessment work performed on the claim, as recorded in the appropriate local recording office. The section further provides that failure to file such instruments, i.e., copies of both the location notices and the evidence of assessment work, within the specified time period shall be deemed conclusively to constitute an abandonment of the mining claim.

The responsibility for complying with the recordation requirements of FLPMA rests solely with the claim owners individually. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining, Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In

1/ Appellant has indeed filed a statement of reasons for this appeal; however, all references in that statement, including the attached exhibits, appear to be to another of appellant's unfortunate mining claims, CA MC 49249, whose case file was closed by BLM on Apr. 27, 1981, after that claim had been declared abandoned and void, with no appeal ever having been filed.

enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute or to afford claimants any relief from the statutory consequences. 2/ Nicholas P. Newby, 60 IBLA 264 (1981); Lynn Keith, *supra*.

Appellant may wish to consult with BLM about the possibility of again relocating his claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

2/ We therefore decline to grant appellant's request for an extension of time through July 1982 in order that he might find California counsel with knowledge of the mining laws, because this Board would in no case have legal authority to excuse appellant's lack of compliance with FLPMA.

